

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-217685

DATE: May 31, 1985

MATTER OF: Dr. Saul Narotsky - Overtime Claim for
Traveltime

DIGEST:

1. Employee claims overtime compensation for travel to temporary duty station on Sunday on grounds that such travel was arduous. Claim is denied since our decisions have held that, absent unusual conditions, travel by automobile over hard-surfaced roads does not constitute travel under arduous conditions under 5 U.S.C. § 5542(b)(2)(B)(iii) (1982).
2. Employee claims overtime compensation for travel to temporary duty station on Sunday on grounds that such travel resulted from an uncontrollable event. Claim is denied since our decisions have held that travel to relieve another employee for scheduled annual leave is within the agency's administrative control and is not compensable under 5 U.S.C. § 5542(b)(2)(B)(iv) (1982).

ISSUE

The issue in this decision involves an employee's claim for overtime for travel on Sunday to a temporary duty station. We hold that the claim must be denied since the travel was not under arduous conditions and it did not result from an event which could not be scheduled or controlled administratively.

BACKGROUND

This decision is in response to a request from W. J. Hudnall, Director, Personnel Division, Food Safety and Inspection Service (FSIS), United States Department of Agriculture, concerning the overtime claim of an FSIS employee, Dr. Saul Narotsky.

Dr. Narotsky is a relief supervisory veterinary medical officer who was performing temporary duty in Rochester, New York, when he was informed on Friday, October 22, 1982, that he would have to relieve another veterinarian in Morrisonville, New York, at 8 a.m. Monday, October 25. Dr. Narotsky drove 9 hours on Sunday, October 24, in order to perform this temporary duty, and he claimed overtime for traveltime on the grounds that: (1) the travel was carried out under arduous conditions (travel on Sunday); (2) the traveltime could not be controlled by the agency; and (3) the travel was due to official necessity.

Dr. Narotsky's claim was denied by his agency and he filed a grievance under agency grievance procedures. His grievance was denied on July 16, 1984, on the basis that the travel was not arduous and that his travel was to relieve a doctor for scheduled annual leave and, therefore, was not a result of unforeseen circumstances. Finally, the agency denied his grievance on the basis that his travel was within the administrative control of the agency.

In requesting our review, Dr. Narotsky argues that annual leave for veterinarians is scheduled far in advance and that only because of the sudden unavailability of a scheduled relief veterinarian was he ordered to travel to Morrisonville. He maintains that he should be compensated for his travel on Sunday, outside the regular workweek.

OPINION

The agency report states that Dr. Narotsky is exempt from coverage under the Fair Labor Standards Act, and, therefore, any entitlement to overtime compensation would be under title 5, United States Code.

The statute authorizing overtime compensation provides in 5 U.S.C. § 5542(b)(2) (1982), that time spent in a travel status away from the official duty station of an employee is not considered to be hours of employment unless the travel: (1) involves the performance of work while traveling; (2) is incident to travel involving the performance of work while traveling; (3) is carried out under arduous conditions; or (4) results from an event which could not be scheduled or controlled administratively. Dr. Narotsky is claiming that the travel was performed under arduous conditions and that it resulted from an uncontrollable event.

Arduous conditions

As to what constitutes arduous conditions under the statute, we note that in guidance provided by the Office of Personnel Management (OPM), travel under arduous conditions would include travel over unusually adverse terrain, during severe weather conditions, or to remote, barely accessible facilities by foot, horseback, or a truck. Federal Personnel Manual (FPM) Supplement 990-2, Book 550, S1-3b(2). Our decisions have held that what constitutes arduous conditions depends on the circumstances of each case but that absent unusual circumstances, travel by automobile over hard-surfaced roads is not considered arduous. Nathaniel R. Ragsdale, 57 Comp. Gen. 43 (1977); 41 Comp. Gen. 82 (1961); Internal Revenue Service, B-199646, August 11, 1981; and B-163654, June 22, 1971.

Therefore, in the absence of evidence of unusual weather or road conditions, we hold that Dr. Narotsky's travel to Morrisonville was not under arduous conditions. We note also that the travel was performed on Sunday, outside of the employee's regular workweek, and that the travel involved a long period of time, but those factors do not, by themselves, warrant the payment of overtime compensation. Thomas G. Hickey, B-207795, December 2, 1982, affirmed in B-207795, February 6, 1985.

Uncontrollable event

Dr. Narotsky contends that there must have been some unforeseen emergency which prompted his supervisor to order him to relieve the veterinarian in Morrisonville. Thus, he argues that there was an immediate official necessity that required that the travel be performed outside the regular workweek.

As noted above, the statute authorizes overtime payment where the travel results from an event which could not be scheduled or controlled administratively. See 5 U.S.C. § 5542(b)(2)(B)(iv) (1982). The guidance issued by the OPM refers to "scheduled or controlled administratively" as the ability of an agency to control the event which necessitates an employee's travel. FPM Supp. 990-2, Book 550, S1-3(b)(2).

Our decisions have held that the "event" referred to in the statute is anything which requires the employee to perform official travel away from his duty station. 51 Comp. Gen. 727 (1972); and Hankins and Archie, B-210065, April 2, 1984. The event must require immediate attention,

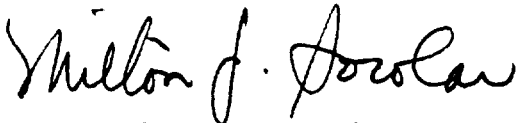
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and there must also exist an immediate official necessity in connection with the event which requires the travel to be performed outside the employee's regular duty hours. 51 Comp. Gen. 727, cited above, and Mark Burstein, B-172671, March 8, 1977.

We have previously considered the situation where an employee must travel in order to perform a relief assignment. In B-163654, July 26, 1973, we held that travel to provide relief for scheduled annual leave was within the agency's administrative control and was not compensable under 5 U.S.C. § 5542(b)(2)(B)(iv). We note that the failure to schedule such travel within the hours of the employee's administrative workweek did not provide any basis for compensation and, upon reconsideration, we expanded upon the latter point. See B-163654, January 21, 1974.

As noted in this latter-cited decision, Congress has provided that, to the maximum extent practicable, travel "shall" be scheduled within the employee's regularly scheduled workweek. 5 U.S.C. § 6101(b)(2). However, it is within the discretion of the agency to determine when it is impracticable to schedule travel within the employee's regular scheduled workweek, and unless the travel meets the conditions of 5 U.S.C. § 5542(b)(2), there is no entitlement to overtime pay for travel outside of the employee's regular workweek. B-163654, January 21, 1974. See also Barth and Levine v. United States, 215 Ct. Cl. 383 (1978).

Accordingly, we sustain the agency's determination denying Dr. Narotsky's claim for overtime compensation.

for 
Comptroller General
of the United States